

July 3, 2018

SUBMITTED VIA FOIA ONLINE

Regional Freedom of Information Officer
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: Freedom of Information Act Request Concerning POWDER MILL STATE FISH HATCHERY 288 MERRYMEETING RD, NEW DURHAM, NH 03855 FRS ID: 110011033096.

Dear Sir or Madam:

The Conservation Law Foundation (“CLF”) hereby requests the records described below pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* CLF requests disclosure of all requested records including any and all nonexempt portions of records that are otherwise determined to be exempt from review under the FOIA pursuant to 5 U.S.C. §552(b). *Wightman v. Bureau of Alcohol, Tobacco & Firearms*, 755 F.2d 979, 983 (1st Cir. 1985). The requested records relate to Powder Mill State Fish Hatchery’s facility in New Durham, New Hampshire (POWDER MILL STATE FISH HATCHERY 288 MERRYMEETING RD, NEW DURHAM, NH 03855 (FRS ID: 110011033096)).

Specifically, CLF requests the EPA provide the following:

1. All Discharge Monitoring Reports (DMRs) for all outfalls at Powder Mill State Fish Hatchery (Powder Mill) from June 1, 2013 to present.
2. Any attachments submitted by Powder Mill in connection with their DMRs from June 1, 2013 to present, including but not limited to, all ambient upstream river water pH sampling data.
3. Any and all lab reports submitted by Powder Mill to Region 1 EPA or the New Hampshire Department of Environmental Services (NHDES) from June 1, 2013 to present.
4. All correspondence from June 1, 2013 to present between Powder Mill and Region 1 EPA staff about any of the following topics: Powder Mill’s National Pollutant Discharge Elimination System (NPDES) permit; violations of Powder Mill’s NPDES permit; discharges into Merrymeeting River or Merrymeeting Lake; or pollution in the Merrymeeting River or Merrymeeting Lake.

5. Powder Mill State Fish Hatchery's application to renew their most recent NPDES permit, and any correspondence between Powder Mill and Region 1 EPA or NHDES about this process.
6. Any other relevant information.

CLF looks forward to a response and determination from your office within twenty working days of receipt of this request consistent with 5 U.S.C. § 552(a)(6) and 40 C.F.R. § 2.104. If this request is denied in whole or in part, CLF is entitled to receive, at a minimum, (1) a detailed index/list of the records withheld, including the name of the record, the subject of the record, the author of the record, and the date of the record; and (2) EPA's basis for withholding the records. *Church of Scientology Int'l v. U.S. Dep't of Justice*, 30 F.3d 224, 228 (1st Cir. 1994); *Vaughn v. Rosen*, 484 F.2d 820, 823-28 (D.C. Cir. 1973), cert. denied 415 U.S. 977 (1974).

Additionally, because CLF works on behalf of the public interest and this FOIA request is made in furtherance of the public interest, CLF requests a waiver of any and all fees associated with the disclosure of records pursuant to this request. The FOIA and EPA's regulations provide that records will be furnished at reduced or no charge when disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. §552(a)(4)(A)(iii); 40 C.F.R. §2.107(l). CLF addresses in the following paragraphs the six factors that the FOIA officer will consider in determining whether CLF has met the first (disclosure is in the public interest) and second (not primarily for commercial interest of the requester) fee waiver requirements.

First fee waiver requirement:

- (i) The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote. 40 C.F.R. §2.107(l)(2)(i).

CLF seeks the information referred to in this request in order to better understand the factual and policy issues concerning pollution in and around the Merrymeeting River as a result of violations of the Clean Water Act on behalf of its approximately 4,000 members and the public. The requested records directly concern the operations and activities of USEPA in its role as the primary enforcer and administrator of the Clean Water Act in New Hampshire, in which role USEPA drafted the applicable NPDES permit(s) and maintains the records regarding permit applications and pollutant discharges from Powder Mill State Fish Hatchery into the Merrymeeting River.

- (ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an

increased public understanding of those operations or activities. 40 C.F.R. §2.107(l)(2)(ii).

The records requested by CLF will provide CLF, its members, and the general public with an increased understanding of the NPDES permitting operations and activities of USEPA as they relate to permit applications and pollutant discharges from Powder Mill State Fish Hatchery into the Merrymeeting River. Moreover, CLF specifically intends to publish EPA's response and disseminate the responsive documents to CLF's members and the general public.

- (iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. 40 C.F.R. §2.107(l)(2)(iii).

The records are requested by CLF on behalf of its approximately 4,000 members and the general public, which constitute a reasonably broad audience of persons. **CLF specifically intends to publish EPA's response and disseminate the responsive documents to CLF's members and the general public.**

- (iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. 40 C.F.R. §2.107(l)(2)(iii).

The public's understanding of the factual and policy issues concerning pollution in and around the Merrymeeting River will be enhanced to a significant extent by disclosure of the requested records regarding permit applications and pollutant discharges from Powder Mill State Fish Hatchery into Merrymeeting River.

Second fee waiver requirement:

- (i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. 40 C.F.R. §2.107(l)(3)(i).

CLF is a non-profit environmental organization with no commercial interests whatsoever.

- (ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." 40 C.F.R. §2.107(l)(3)(ii).



As CLF is a non-profit public interest environmental organization with no commercial interests whatsoever, CLF's primary (and only) interest in the requested disclosure is non-commercial and entirely in the public interest.

Consistent with the fee waiver provisions of the FOIA statute and EPA regulations, CLF seeks the information referred to in this request in order to better understand the factual and policy issues concerning water pollution in and around the Merrymeeting River and the operations and activities of the government to abate that pollution and protect those public waters, on behalf of CLF's members and the public. CLF has no commercial interest whatsoever that will be furthered by this disclosure. 40 C.F.R. §2.107(1)(2)-(3). Moreover, CLF intends to publish EPA's response and make the responsive documents available to CLF's members and the general public. Consequently, a fee waiver is appropriate under FOIA and EPA regulations.

CLF appreciates that this request potentially may involve a large volume of administrative material and is willing to discuss ways to streamline the response.

Please provide the requested documents to:

Rachel Sinsheimer
Paralegal
CLF Massachusetts
62 Summer Street
Boston, MA 02110
(617) 850-1731
rsinsheimer@clf.org

Please contact me if any further information is necessary. Thank you very much for your consideration and prompt response to this request.

Sincerely,
/s/ Rachel Sinsheimer

Rachel Sinsheimer
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